IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION No. 2317 of 2007

Anjum Gulam Rasool Patel. ... Applicant.

Vs.

The State of Maharashtra ... Respondent.

Mr Shirish Gupte, senior counsel with
Mr Prakash Naik, Advocate for the Applicant.

Mr K. V. Saste, APP for the State.

CORAM: V. C. DAGA, J.

DATED: 29.08.2007.

P.C.:-

1. Heard Mr Shirish Gupte, Senior counsel, assisted by Mr Prakash Naik, Advocate for the applicant and Mr K. V. Saste, APP for the State.

2. Perused application and material available on record.

3. This is an application for bail under Section 21 (4) of the Maharashtra Control of Organised Crime Act, 1999 ("the M.C.O.C.Act" for short) read with Section 439 of the Criminal Procedure Code, 1973 ("the Cr.P.C". for short).

FACTUAL MATRIX :-
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4. The factual matrix, in short, is that C.R. No. I-111 of 2005 was registered under Sections 363, 336, 504, 506 read with Section 34 of the I.P.C. with Kashimira Police Station on 11.7.2005; on a complaint of one Somabhai Madhu Patel, who works as Contractor.

5. It is alleged in the complaint that on 11.7.2005 at about 12:30 noon, the complainant was working on a construction site. At that time, the accused-applicant with two others reached there by a Maruti Vagonor car No.MH-B-480 and pelted stones and made the workers run away from the site. Two persons accompanied with the accused Anjum Patel caught hold the complainant and forcibly put him in the said Maruti car and took him to the office of one Asif Shaikh situated at Kashigaon. After administering serious warning to the complainant not to again visit the construction site, else he would be killed. Thereafter, the complainant was pushed out of car and the accused along with others left the place.

6. It is further alleged that the similar act was repeated on 12.7.2005, details of which are more or less similar. Crime was registered against the accused persons as stated hereinabove.

7. Accused persons appeared before the Judicial Magistrate, First Class, Thane and prayed for bail which was granted by an order dated 14.7.2005.

8. It was revealed during the course of investigation that the accused-applicant was involved in unlawful activities, and that he has formed organized crime syndicate and committed such activities with the object of gaining pecuniary benefits, or gaining undue economic or other advantage for himself and other persons; details of which are disclosed in the counter-affidavit, supported by the record, reproduced hereinbelow:-

DETAILS OF OFFENCES

Registered with Kashimira Police Station:-

1] CR No. 109/2006 under Sections 363, 342, 436, 147 to 149 (CC No.2/97).

2] CR No. 061/97 under Sections 420, 463, 464,465, 466,467, 468, 471, 506, (CC No. 110/99)

3] CR No.77/99 under Sections 384, 386, 387, 34 IPC (CC No. 29/2000)

4] CR No.78/99 under Sections 353, 332,188, 34 IPC

5] CR No. 101/2003, Under Sections 379, 447,504,506 IPC

6] CR No. 131/2003 under Sections 447,341, 427,504, 506(ii) IPC

7] CR No. 111/2005 under Sections 363, 336, 504, 506, 34 IPC

Registered with Mira Road Police Station:-

1] CR No. 309/2004 under Sections 447, 384, 34 IPC

2] CR No. 303/2005 under sections 307, 34 IPC read with 3, 25, 27 of the Arms Act.

Registered with Manor Police Station:-

1] CR No. 160/95 under Section 379, 34 IPC

2] CR No. 189/96 under Section 420 IPC

9. The accused-applicant Anjum Patel, after his release on bail in C.R. No. 111 of 2005, again committed a serious offence in the jurisdiction of Mira Road Police Station vide CR

No. 303 of 2005 under Sections 307, 120-B, 34 IPC

read with Sections 3, 25 and 27 of the Arms Act.

10. Considering the tendency of the applicant- accused to commit offences repeatedly following preventive actions were taken against the accused - applicant :-

1] 01/91 under Section 56 of the Bombay Police Act.

2] 48/91 Cr.P.C. 107 (bond executed)

3] 12/92 Cr.P.C. 110 (bond executed)

4] 80/92 Cr.P.C. 107 (bond executed)

5] 08/92 Cr.P.C. 110 (e) (g) (bond executed.)

6] 18/92 Cr.P.C. 107 (bond executed)

7] 21/94 Cr.P.C. 110 (Bond executed)

8] 01/99 under Section 56 of Bombay Police Act.

9] 01/04 under Section 56 of Bombay Police Act.

11. According to the prosecution, in spite of taking above mentioned preventive measures, accused Anjum Gulam Rasool Patel did not show any inclination to desist from continuing illegal activities. That taking advantage of the existing laws, he has flouted them repeatedly and continued

to commit illegal activities, which could only be curtailed by stringent measures as such the State was left with no option but to invoke provisions of the M.C.O.C. Act, 1999 to bring him to book.

12. An approval for the application of the M.C.O.C.Act was obtained from the competent authority, that is how the provision of Section 3 of the M.C.O.C.Act were applied.

13. The investigation was, thereafter, taken over by Shri. N.M. Ingle, Sub Divisional Police Officer, Mira Road, Division Thane (Rural)Thane. An application was moved for cancellation of bail granted earlier, contending that the accused has been charge sheeted in more than two offences in the preceding ten years which carry a punishment for three or more years and that the competent courts have taken cognizance of the same. It was alleged that the accused is being resorting to abduction, violence or threats of violence by members of organized crime syndicate for the purpose of gaining pecuniary benefits from builders and businessmen. Investigation in that behalf was required to be done.

14. The application moved for cancellation of bail was opposed by the accused, contending that the accused is law abiding citizen and that he is physically handicapped person, requires help of others, even for day to day activities and that he is carrying business of transport of building material and that bail was granted to the applicant by J.M.F.C.Thane. By that time, the M.C.O.C.Act was not added to the Crime. A question was, thus, raised, "Whether after application of the said Act, existing situation is changed and because of it, whether the bail already granted can be cancelled. Ultimately, after hearing the parties, the Special Judge (M.C.O.C.Act, Thane) was pleased to allow application filed by the State and cancelled the bail granted by the Judicial Magistrate, F.C. Thane in C.R. No. 111 of 2005 vide its order dated 14.10.2005. The applicant-accused was directed to surrender before the Special Judge on or before 15.10.2005.

15. The above order dated 14.10.2005 was subject matter of challenge before this Court in No. 1007 of 2005, which came to be rejected on 14.12.2005. The applicant was again directed to

surrender within two weeks from the date of order i.e. 14.12.2005. The said appeal came to be rejected. The applicant was directed to surrender within two weeks from the date of order i.e. 14.12.2005 on the condition that the applicant shall report to the Investigating Officer daily between 4.00 p.m. to 6.00 p.m.

16. It appears that the applicant neither reported to the Investigating Officer, as directed, nor surrendered within two weeks in compliance with the order of this Court dated 14.12.2005.

17. It further appears that the aforesaid order of the learned Single Judge of this Court was a subject matter of challenge in Special Leave to Appeal (Criminal) No. 551 of 2006. An application for exemption from the surrender came to be rejected and two weeks time to enable to file proof of surrender was granted by an order dated 26.1.2006 passed by the Apex Court.

18. The applicant did not file proof of surrender within two weeks before the Apex Court as ordered. It further appears that ultimately,

the Apex Court was pleased to dismiss the S.L.P. No. 551 of 2006 by an order dated 26.1.2006 granting two weeks time to surrender. The applicant did not submit to the order of the Apex Court. Police was required to search him extensively at various places and finally succeeded in arresting the applicant on 3.3.2006 and since then he is in judicial custody.

19. The applicant-accused, during the period of jail custody, filed Application No. 415 of 2006 for bail under Section 439 of the Cr.P.C. which he did not press. Again, he moved another application bearing No. 1016 of 2006 which was also not pressed by him. Thereafter, the applicant moved another application for bail being Application No. 597 of 2006 which came to be rejected by the learned Special Judge,M.C.O.C. Thane, vide order dated 26.4.2006, on the ground that the complainant's statement is corroborated by the statements of eye-witnesses and the investigation at the relevant time was in progress.

20. It appears that after filing of the charge sheet, again, applications for bail were

moved by the applicant-accused being Exhs. 5 and 11 in M.C.O.C. Special case No. 13 of 2006 which again came to be rejected vide order dated 6.10.2006 passed by the Special Judge, M.C.O.C.,Thane for the reasons recorded therein.

One of such reasons is reproduced hereinbelow:

> "The report of the Investigating Officer also reveals that the accused was declared as absconding and proclamation had also to be issued against him. Previously, the accused was released on bail before the application of the M.C.O.C.Act. During that period, the accused was involved in C.R. No. 303 of 2005 registered with Mira Road Police Station for offences under Sections 307. 120-B of the I.P.C. Therefore, in view of the above discussion, I reject the bail application."
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> (emphasis supplied)

21. Thereafter, again one more application (Exh.15) was moved before the learned Special Judge, M.C.O.C,Thane, which also came to be rejected by a reasoned order dated 13.2.2007. The relevant concluding paragraph of the said order reads as under:-

> "The bail application of the applicant was decided on merit vide common order below Exhs. 5 and 11 on 6.10.2006. Now, the entire material on record was taken into consideration while deciding the previous bail application. There is

absolutely no change in circumstance, apart from the fact that the applicant has changed his Advocate and so the bail application is rejected."

22. After having consistently failed to obtain bail, the accused has, now, invoked jurisdiction of this Court, contending that there is no material to suggest that the applicant is engaged in any continuing unlawful activity or that the applicant has committed any offence of organised crime within the meaning of Section 2 (e) of the M.C.O.C.Act,1999. He raised, amongst other, the following grounds to seek bail:-

1. According to the applicant, reading ingredients of Section 2 (1)(d), (e) and (f) of the M.C.O.C.Act, 1999 are absent which together reveals that what is punishable is continuing unlawful activity as a member or on behalf of such syndicate in respect of which one or more charge sheets have been filed in Competent Court within the preceding 10 years and the Court has taken cognizance of the same.

2. That the order of Inspector General of Police, Konkan Division, Navi Mumbai is not in consonance with the Section 23(1)(a) of the M.C.O.C.Act, 1999.

3. The applicant submits that the order of sanction also does not comply with Section 23 (2) of the M.C.O.C.Act,1999. On perusal of the order of sanction dated 29th August, 2006 reveals that it has been accorded without bearing in mind to the provisions of the M.C.O.C,Act, 1999.

4. The effect of the provisions of the M.C.O.C. Act, which define continuing unlawful activity, organized crime, organized crime syndicate, as defined in Section 2 (d), (e) and (f) thereof, have been totally ignored by the Sanctioning Authority.

5. That Section 23 (1)(a) of the M.C.O.C. Act, 1999 lays down conditions precedent for recording information about the commission of offence under

the M.C.O.C. Act, 1999 for which approval by a Police Officer not below the rank of Dy.Inspector General of Police is necessary. Thus, in absence of a valid order of approval, the entire proceedings against the applicant under the provisions of the M.C.O.C.Act, 1999 stands vitiated.

23. In order to oppose the bail Investigating Officer, Mr. N. M. Ingle, Sub Divisional Police Officer, Mira Road Division filed counter-affidavit dated 31.7.2007 referring to the complaint of the complainant and the incidents dated 11.7.2007 and 12.7.2007 and the statements of other witnesses recorded in that behalf. It is further averred in the counter-affidavit that the applicant Anjuman Patel has formed several groups working for him, indulging in the illegal activities, kidnapping and extortion for the purpose of gaining pecuniary benefits and that he along with other persons who are in his group referred to violent activities and gave threats, committing abduction, extorting protection money and created a reign of terror in

the areas of Mira Road, Kashimira, Manor, Bhayender at the point of fire arms and by other means. The various crimes, registered against him in above Police Stations, are brought on record together with the material leading the preventive action taken against the accused. It is also alleged that after getting bail, he has committed other offence which ultimately forced the State to invoke the provisions of the M.C.O.C.Act with necessary permission from the Inspector General of Police.

24. In the counter, while dealing with one of the contentions raised by the applicant that, he is physically handicapped and, therefore, cannot drive a vehicle or a motor car, reliance is placed on the statements of the witnesses who claimed to have seen the applicant-accused driving motor-car.

25. The State has pressed into service following eight grounds to seek rejection of the bail application :-

1. That there is sufficient evidence against the accused to connect him with the crime.

2. That the offence registered against the accused is of very serious nature which is well within the purview of the MCOC Act, 1999.

3. That the appellant-accused Anjum Gulam Rasool Patel is a member of Land Mafia and organized crime syndicate leading different criminals in groups and with the help of his associates, continued to commit illegal activities in an organized manner by collecting information, movements and financial strength of the victims and systematically using his muscle power to grab the property, thus, gains an upper hand and supremacy among the criminals syndicates operating in areas of Kashimira, Bhayandar and Mira Road Police Stations for the purpose of pecuniary gain for himself and members of his organized crime syndicate.

4. That the accused along with his associates has created a reign of terror by resorting to criminal activities like murder, attempt to murder, land grabbing, extortion, abduction, dacoity and there are more than 12 serious offences registered against him.

5. That the accused Anjum Gulam Rasool Patel is capable of making inducement for the complainant-witnesses and or threaten them with dire consequences as long as he remains on bail.

6. That the accused Anjum Gulam Rasool Patel has repeatedly misused the bail granted in earlier cases by committing fresh offences of serious nature. Recently after having released on bail in C.R.No. 111/05 under Sections 363, 336, 504, 506, 34 IPC and committed an offence vide Mira Road Police

Station CR No. 303 of 2005 under Sections 120 (b), 307, 34 read with Section 3, 25 and 27 of Arms Act. In view of Section 21 (4) of M.c.O.C.Act, facts and circumstances of the case, the applicant is not entitled for bail.

7. That the accused Abdul Manan Abdul Sattar Tanwar @ Shaikh is on bail in this offence and another co-accused Arshad @ Harshad patel @ Khan @ Arshad Ansari is yet to be arrested (absconding). If the applicant-accused released on bail, he along with above accused may come together and will continue committing unlawful activities.

8. That the earlier bail application No. 415 of 2006 and 597 of 2006 of the accused-applicant were rejected by the M.C.O.C. Court, Thane.

Rival Oral Submissions :
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26. Learned Advocates appearing for the applicant-accused and the State respectively have canvassed their submissions in consonance with their stand taken in their respective affidavits.

27. One of the substantive contentions of Mr Gupte, learned Senior Advocate appearing for the applicant, is that the order granting approval suffers from non-application of mind. There are no references to the previous offences and that the order does not take into account anything except reproducing the Sections. He further submits that once the offence is registered under IPC, the M.C.O.C.Act cannot be applied. He also canvassed his contention on merits of this application taking me through the factual aspects of the matter. Much emphasis is given by him to say that the applicant-accused being handicapped person, cannot drive a vehicle and, therefore, the allegations made in the complaint by the complainant are absolutely false and concocted. He, thus, prayed for grant of bail in favour of the applicant- accused.

Statutory Provisions :
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28. Before considering rival submissions, it is necessary to bear in mind that the M.C.O.C. Act is a special legislation and contains special provisions such as sub-sections (4) and (5) of section 21 which read as under:

> "**21. Modified application of certain provisions of the Code.**
>
> ....
>
> (4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act, shall, if in custody, be released on bail or on his own bond, unless---
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> (a) the Public Prosecutor has been given an opportunity to oppose the application of such release; and
>
> (b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.
>
> (5) Notwithstanding anything contained in the Code, the accused shall not be granted bail if it is noticed by the Court that he was on bail in an offence under this Act, or under any other Act, on the date of the offence in question."

29. Reading of the above provision indicates that no person accused of an offence punishable under this Act, if in custody, can be released on bail unless the Public Prosecutor has been given an opportunity to oppose the application of such release, and where the Public Prosecutor opposes the application, unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail, no bail can be granted to the accused. Keeping the aforesaid provisions in mind, one has to consider rival submissions for grant of bail.

Consideration :
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30. Having heard rival parties, one of the attacks of Mr.Gupte was to the order of sanction. It is needless to mention that right up to the Apex Court in the previous proceedings ample opportunity was available to raise these contentions but not raised for the reasons best known to the applicant. Secondly, these contentions, in absence of challenge in the appropriate forum, can hardly be examined by this Court in the present bail application by

conducting deeper scrutiny since the order of approval has become final. Thus, submissions made in this behalf has no merit though order granting sanction prima facie; appears to be legal and proper. However, if the applicant, on advice, takes up this challenge before appropriate forum in appropriate proceedings for deeper scrutiny, then it will be open for him to do so, subject to the other provisions of law for the time being in force since observations made herein by me are prima facie.

31. So far as merits are concerned, the question which needs consideration is: whether or not reasonable grounds for believing that the applicant is not guilty of the offence alleged and that he is not likely to commit any offence while on bail are made out?

32. Having examined the material available on record, one has to say that there is, prima facie; ample material available on record to suggest that the applicant knows driving. He has been seen by more than two persons driving vehicles.

33. While considering the bail application, seriousness of the offences repeatedly charged is one of the prime consideration. Second aspect which needs to be taken into account, at the stage of bail, is to weigh or scrutinize the prima facie evidence on diluted consideration to come to the conclusion that applicant is not guilty of the offence alleged. So far as the offence alleged against the applicant is concerned, at this stage, prima facie; it appears that the same is corroborated by the complaint of the complainant and statements of the witnesses. If eye witnesses are, prima facie; to be believed, then the possibility of acquittal is also remote.

34. The concrete material, which is not in dispute, as stated above, is that various crimes are registered and pending against him. Sufficient evidence is available on record to demonstrate the tendency of the applicant to commit offences repeatedly. Therefore, a possibility of the applicant not committing any offence under the M.C.O.C.Act in future, if released on bail, is prima facie; remote looking to his past conduct.

35. The above material available on record and repeated adverse findings, recorded by the Special Judges in as many as more than five orders, are sufficient to reach to the conclusion that there exists no ground to believe prima facie; that the applicant is not guilty of the offences charged.

36. In addition to the above considerations, a possibility of securing presence of the accused at the time of trial is also required to be taken into account. While considering this aspect, this court cannot overlook previous conduct of the applicant- accused. In this particular case, ample material available on record suggest that after cancellation of bail, the order was subject matter of challenge in Criminal Appeal No. 1007 of 2005 decided on 14.12.2005; wherein, at the request of the applicant, indulgence was shown by the learned Single Judge of this Court by giving two weeks time to the applicant to surrender from the date of the order on the condition that the applicant shall report to the Investigating Officer daily between 4.00 to 6.00 p.m. The applicant neither reported nor surrendered as

ordered by this Court.

37. The applicant, thereafter, approached the Apex Court by preferring the S.L.P. referred to hereinabove. The application for exemption from surrender was rejected. Two weeks time was granted to enable the applicant to file proof of surrender. He did not surrender. Consequently, he could not file proof of surrender. With the result, the S.L.P. came to be dismissed by an order dated 26.1.2006. The applicant did not surrender in compliance with the order of the Apex Court. Police was required to search for the applicant extensively at various places and finally succeeded in arresting him on 9.3.2006. Thus, looking to the conduct and tendency of the applicant to disregard law, it will be difficult to secure his presence at the time of trial. I do not think that the applicant is entitled to be released on bail. Once he is released on bail, possibility of jumping bail and/or committing further offences under the M.C.O.C.Act cannot be ruled out.

38. In the result, application is rejected

for the reasons recorded herein together with the reasons recorded by the learned Special Judge, M.C.O.C.,Thane in his order dated 6.10.2006.

(V.C. DAGA,J)